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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
09/673,814	10/20/2000	Michael Kretzschmar	H01.2-9509	5477
7590	10/08/2004			
Vidas Arrett & Steinkraus 6109 Blue Circle Drive Suite 2000 Minnetonka, MN 55343-9131			EXAMINER JONES, DAVID B	
			ART UNIT 3725	PAPER NUMBER

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/673,814

Applicant(s)

KRETZSCHMAR, MICHAEL

Examiner

David B Jones

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-30 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 2-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It may be the Attorney's opinion that the claims and specification are but awkward in translation, more so it is the Examiner's position that such language renders the claims vague and indefinite in scope. The claims are narrative in form and replete with indefinite and/or functional or operational language. Each element should be positively recited and then correlated to other structure of the combination. Claim 2 will be treated as by way of example; all claims should be reviewed and amended into proper and idiomatic claim form. For example in claim 2 alone the elements, "one driving piston", "supported nipper halves", "a feed member", "flux of forces", and "a closing force", lack positive recitation. Further, on line 2 of claim 2, "a control range" is a term that is vague and indefinite failing to clearly set forth definite structure. The specification and claims should be amended so as make clear the structure Applicant considers to be the invention; it is not up to the artisan of ordinary skill to divine such structure. If the range is structure then it should be set forth in an idiomatic fashion. Yet further, "nipper insert halves" line 6 of claim 2, is vague and indefinite language. Is applicant calling for inserts in the nipper halves, etc? On line 4/5 of claim 2, "a working range" is vague and indefinite in nature as well and should be set forth in an idiomatic fashion. Again all claims should be reviewed for like problems and amended into proper claim form. Alternative limitations, which are contained in most of

the dependent claims, should be avoided in that they render the claims indefinite for failing to specifically point out the claimed invention. Further the last sub-paragraphs of each of claims 28 and 29 are not understood and the structure is not clearly defined.

2. Applicant's arguments filed 08/04/2004 have been fully considered but they are not persuasive. As has been treated supra in the body of the rejection, the claims are not clear and definite and idiomatic with U.S. claim drafting practice. Although the artisan of ordinary skill in the art may divine what is being claimed, the claims themselves are awkward, indefinite and unclear, failing to particularly point out what is considered to be patentable. Hence patentability is precluded under 35 USC 112, 2<sup>nd</sup> paragraph.

3. Claims 2-30 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

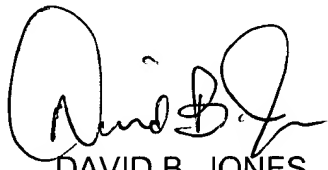
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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David B. JONES whose telephone number is (703) 308-1887.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1148.

In the event that the Applicant(s) wishes to communicate via Fax, the current Fax number for Group 3700 is (703) 305-3579

DBJ



DAVID B. JONES  
PRIMARY PATENT EXAMINER  
ART UNIT 3725